IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

MACA.No. 1630 of 2006()

OPMV.667/2003 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHADT.16.3.05
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APPELLANT/PETITIONER

DINESAN, S/O.BALAN,
NELPIRAKUTTIYIL HOUSE,
PAZHAYARIKANDOM P.O.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS:
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1. **M.AZHAKAPPAN, S/O.MAHASWAMI,**
   H.NO.852/1, PLAMALAKUDE, KALLAR P.O.,
   KURISSUPARA BHAGOM.

2. **SAJU @ SHALI, S/O.NARAYANAN,**
   NELLANIKKAL HOUSE, KORANGATTY BHAGOM,
   ADIMALY KARA, MANNAMKADOM VILLAGE.

3. **THE UNITED INDIA INSURANCE CO. LTD.,**
   ADIMALY.

BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.A.C.A. No. 1630 of 2006

Dated this the 4th day of June, 2007

Judgment

Koshy, J.

Appellant/Petitioner while travelling in a jeep met with an accident when the jeep turned turtle. He claimed compensation of Rs.14,61,000/-, but, limited to Rs.6 lakhs. The tribunal found that the accident occurred due to the negligence of the second respondent driver of the vehicle insured by the third respondent insurance company. The tribunal granted only a total compensation of Rs.3,47,375/-. As a result of the accident, his left leg was amputated. After seeing the petitioner and after seeing the medical certificates produced, the tribunal fixed 50% disability. The tribunal also considered Schedule I Part II of the Workmen's Compensation Act for fixing the percentage even though claimant was claiming compensation for 100% disability. According to the petitioner/appellant, he was getting a monthly income of Rs.4,500/-. He was a painter by profession. It is also contended that the accident occurred in 2003. Even an unskilled labourer in Kerala will get more than Rs.100/- per day. The tribunal assessed monthly income as

Rs.2,500/-, but, for calculating the compensation only Rs.2,000/- was taken because maximum salary that can be taken into account at that time under the Workmen's Compensation Act was Rs.2,000/-. The Workmen's Compensation Act itself was amended. We are considering compensation under section 166 of the Motor Vehicles Act. Even Rs.2,500/- taken by the tribunal as monthly income is on the lower side. However, there is no justification at all to calculate the compensation taking monthly income as Rs.2,000/- after assessing the monthly income at Rs.2,500/-. Considering the age of the claimant, the tribunal fixed 17 as the multiplier taking guidance from the second schedule. The tribunal directed the insurance company to deposit the amount. Only quantum of compensation is disputed in this appeal. We are of the view that the tribunal ought to have considered Rs.2,500/- as monthly wages for the calculation of compensation also. Then, the compensation payable will be Rs.2,500 x 12 x 17 x $\frac{50}{100}$ = Rs.2,55,000/-. The tribunal has granted only Rs.2,04,000/- towards disability. Hence, additional compensation payable will be Rs.51,000/-. We see no ground to interfere in the compensation granted under other heads as compensation granted under other heads are just and

reasonable. The additional compensation of Rs.51,000/- should be deposited by the third respondent insurance company with 9% interest from the date of application till deposit.

Appeal allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.1630/2006

JUDGMENT

Dated:4th June, 2007